

Commercial Leases – A Tenant’s Guide

Introduction

Taking a lease of a commercial property is a big commitment. This information sheet has been prepared to assist you in understanding the stages involved. A flowchart showing the steps in the process is attached.

Heads of terms

Heads of terms setting out the main terms of your agreement with the landlord should normally be agreed at the outset. Once these have been agreed it is very difficult to change anything later in the process. For this reason we recommend you involve us at an early stage and ask us to comment on them before they are finally agreed. Heads of terms should deal with:

- the extent of the property included in the lease and any rights that you will require such as for parking and access
- the amount of rent and whether it will be changed at any time during the lease (known as a rent review)
- the length of the lease
- any rent free period or incentive for you to take the lease
- whether the lease will be protected by the Landlord and Tenant Act 1954 (see **Landlord and Tenant Act 1954**)
- any rights to end the lease early (known as break clauses)
- any rent deposit required by the landlord as security for payment of the rent and compliance with other conditions.
- your repairing obligations. These may be limited to a schedule of condition (see **Condition of Property**)
- any alterations you may wish to make to the property or signs you want to put up
- whether you will have to pay any of the landlord’s costs

Landlord and Tenant Act 1954 (“1954 Act”)

The 1954 Act gives certain tenants the right to a new lease once the originally agreed term comes to an end. The landlord may not want you to have this right. If the location of the property is key to your business or the cost of fitting out is high you should think carefully before agreeing to give it up.

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Before getting too far you need to check

Additional costs

There may be additional costs that you will need to factor into your business plan. These could include:

- **Service charge** If you are taking a lease of part of a property, you are likely to have to pay a service charge. You should find out how much this is likely to be and whether the amount will be fixed, whether you will be expected to contribute to any reserve fund and whether any major expenditure is anticipated in the next twelve months.
- **VAT** This may be payable on the annual rent and any service charge. Even if VAT is not currently payable it could be payable in the future.
- **Insurance Generally** the landlord will insure the property and pass the cost onto the tenant. The landlord usually insures for loss of rent to protect his income for any period where rent is not payable because the premises have been damaged or destroyed. You will be responsible for insuring your contents and possibly any plate glass at the property.
- **Business Rates** You will need to contact the rating department of the Local Authority to ask how much the rates will be.
- **Stamp Duty Land Tax (“SDLT”) and Land Registry fees** You may need to pay SDLT on the grant of the lease. In addition leases for a term of seven years or more must be registered at the Land Registry and a fee will be payable.

Services including internet access

If the property is being let through an agent, the agent's particulars should contain details of which main services are available and connected. However, you should check yourself and, if in any doubt, you should ask your surveyor to investigate further. You should check broadband speed if this is important for your business.

Planning

You should ask the landlord or agent whether the property has planning permission for your proposed use. If a new planning permission is required this will cause a delay in the transaction and may lead to increased costs for you if the landlord is not prepared to pay for it.

Inspection

It is important that you inspect the property thoroughly and that you tell us of any rights which you might require over neighbouring property such as for access, parking or keeping signs, or any rights which neighbours may have or appear to have over the property. If it seems that there are any such rights, please let us know.

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Condition of property

The property will be let in its present condition and you will normally become responsible for keeping it in good repair and condition including making good any existing disrepair. This will also include an obligation to repair fixtures and fittings, such as sanitary ware. We strongly recommend that you instruct a surveyor to carry out a survey of the property. We will be pleased to recommend a surveyor to you if you wish.

Your surveyor should also consider whether the property complies with Fire Regulations and, if not, he should be asked to advise upon works that the local authority or the Fire Officer can insist are carried out by you when you move in.

It is also advisable to ask your surveyor to check the Energy Performance Certificate rating for the property. Landlords cannot lawfully let a property to you that has a rating lower than E unless they have registered an exemption. It will also be illegal for them to continue to let a property below this rating after 1 April 2023. It should be noted that with the commitments the UK has made to meet Net Zero targets by 2050, that EPC ratings of C will be required by 1 April 2027 and B by 1 April 2030; it is therefore important to consider what works a Landlord will need to undertake to achieve these targets. You may want to ask for works to be undertaken before you take the lease to avoid disruption. You will also want confirmation that the Landlord will bear the cost of any energy efficiency works.

If you are taking a lease of part only of a building, and if you will have to contribute towards the cost of shared facilities, your surveyor should be asked to inspect those parts of the building too.

If your repairing obligations are to be limited this will need to be agreed at the outset and a record (preferably photographic) of condition (known as a schedule of condition) prepared to attach to the lease. You will need to agree who will arrange and pay for this and if you prepare the schedule, the Landlord will need to approve it.

Agreement for lease

An agreement for lease may be necessary. This will ensure both the landlord and tenant are legally committed to the transaction before any work is done by either party in anticipation of the lease. The agreement will also set a completion date.

The Lease

The lease will be prepared by the Landlord's solicitor based on the heads of terms. We will review the lease to see if it is acceptable from a tenant's point of view and reflects the heads of terms. We will suggest any changes that we believe should be made to the lease and will negotiate these with the Landlord's solicitor. If there are any matters that cannot be agreed and that you feel strongly about, we may ask you to try to negotiate with the Landlord or his agent directly to save time and costs.

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Licence for alterations

If you intend carrying out work to the property, for example, the installation of internal partitions, the erection of signage or installation of aerials, then, depending on the terms of the lease you may need the Landlord's consent. If so, the Landlord's solicitor will prepare a licence for alterations which will impose obligations on you when you carry out the works. You may also be required to reinstate the property when you leave. We will review the licence for you, suggest any amendments and report to you on it.

Rent deposit deed

If a financial deposit is required by the Landlord as security for payment of the rent, his solicitor will prepare a deed setting out when and how the deposit can be used. We will review the deed for you, suggest any amendments and report to you on it.

Information about the Property

We will review the Landlord's title to the property. The Landlord may own the freehold or have a lease himself. We will need to check:

- Whether the landlord is able to grant the lease and whether any third party consents are required such as any mortgagee or head landlord if the landlord's interest in the property is leasehold
- Whether there are any rights, obligations or restrictions affecting the property that may affect your proposed use
- Whether the property benefits from all rights necessary for your use.

We will ask the Landlord to reply to enquiries about the property and will give you a copy of the replies.

Searches

We will apply for desktop searches that we consider to be appropriate and have agreed with you. We recommend that searches are carried out on all transactions. We will report to you when we receive the results.

Documents for signing

The documents will be sent to you to sign with our reports. The fact that you have signed the documents will not bind you until they are completed.

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Completion

Before completion we ask the landlord's solicitor questions. The replies will give us important information about completion. On completion you will be required to pay any sums immediately due to the landlord under the lease and we will send you a financial statement. Until we confirm completion you should not enter into any financial or other commitment relying on the lease.

SDLT and registration at the Land Registry

After completion, if SDLT is payable on the grant of your lease, we will prepare the appropriate form(s) for you to check and sign. SDLT must be paid within 14 days of completion of the lease.

If the lease needs to be registered at the Land Registry we will make an application following completion of the lease. In some cases even if the lease itself does not need to be registered we will need to make an application to register any rights over other property.

Further information

This information sheet highlights some of the key issues involved in taking a lease of commercial premises. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the law as at October 2021 and may be affected by subsequent changes to the law. For more information, please contact Sarah Easton on 01892 510000 or email at: sarah.easton@ts-p.co.uk

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